

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Thomas M. Olsen

v.

Civil No. 06-cv-477-JD

Town of Loudon

O R D E R

The Town of Loudon moves for reconsideration of the court's order denying its motion to dismiss that part of Thomas M. Olsen's claim seeking compensation under 29 U.S.C. §§ 206 and 207 for time he worked beyond forty hours each week while attending the New Hampshire Police Standards and Training Academy. Loudon moved to dismiss the claim pursuant to 29 C.F.R. § 553.226(b)(2), on the ground that it was not obligated to compensate Olsen for training beyond regular working hours that was required for his certification under state law. Olsen argued that 29 C.F.R. § 553.226(c) governed the obligation to compensate officers attending a training academy.

The court denied Loudon's motion because it failed to address § 553.226(c), which appeared to provide the governing rule. Loudon attempts to remedy its earlier omission in its motion for reconsideration. Loudon now argues that § 553.226(b)(c), which provides that police officers who are attending a training academy are due compensation only for the

time that they are in class or in a training session, "merely provides clarification of what is considered 'regular working hours' when police officers or firefighters attend training."

Loudon's motion improperly introduces a new theory that was not raised in its motion to dismiss. See LR 7.2(e). In addition, Loudon's new theory does not provide grounds to dismiss Olsen's claim.

Loudon now contends that § 553.226(b)(2) precludes compensation for time spent training at a training academy that is "outside of regular working hours" and that § 553.226(c) clarifies that "regular working hours" at a training academy include all time that an officer spends in class and in training sessions. Therefore, based on Loudon's own interpretation of the regulations, given the definition of "regular working hours" provided by § 553.226(c), § 553.226(b)(2) does not exempt Loudon from paying Olsen for all time that he spent training at the Academy, including time spent in training beyond forty hours each week.

Conclusion

For the foregoing reasons, the defendant's motion for reconsideration (document no. 20) is denied.

SO ORDERED.



Joseph A. DiClerico, Jr.
United States District Judge

May 10, 2007

cc: Hugh T. Lee, Esquire
David P. Slawsky, Esquire